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In the Supreme Court of the United States

OCTOBER TERM, 1961.

No. 758.

HARRY P. LOCKLIN and ELMER J. BRANT,
general partners doing business under the firm name of
RADIANT COLOR COMPANY,

Petitioners,

vs.

SWITZER BROTHERS, INC., ROBERT C. SWITZER,
and JOSEPH L. SWITZER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS SWITZER BROTHERS, INC., ROBERT E. SWITZER AND JOSEPH L. SWITZER IN OPPOSITION.

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OPINION BELOW.

The judgment of the district court was entered without opinion, but the findings of fact, conclusions of law and judgment are reproduced in Appendix C hereto.* The opinion of the court of appeals is printed as Appendix A to the Petition and is reported in 297 F. 2d 39.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

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* Respondents' appendix filed in the Court of Appeals is referred to herein as "Appendix." The appendices attached to the Petition and this brief in opposition are referred to as Appendix A and B (to the Petition) and Appendix C (attached hereto).

QUESTION PRESENTED.

The question presented is whether the district court abused its broad discretionary power to fashion injunctive remedies for antitrust violations by refusing to enjoin the further use of a trademark which, the lower court concluded, had been misused in conjunction with two patents. The court of appeals held that such power had not been abused.

STATUTE INVOLVED.

The statute involved, 15 U. S. C. § 26, is adequately set forth in the Petition.

STATEMENT.

This is a treble damage antitrust case. The trial court concluded that the respondents (hereinafter called "Switzers") had misused two United States patents, No. 2,417,384 and No. 2,475,529 and the trademark Day-Glo*, in restraint of trade and in a way tending to create a monopoly in unpatented daylight fluorescent materials in violation of the antitrust laws. This decision was based on findings that Switzers had granted an exclusive or preferential right to use the combinations claimed by the patents to trademark licensees who obtained daylight fluorescent materials utilized therein from Switzers or from sources approved by Switzers, that non-licensees were threatened with patent infringement suits, and that patent infringement suits were brought in furtherance of the licensing program. The district court, however, specifically found that:

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* There was no specific finding of fact that the trademark had been misused.

"Switzer made the publications and threats, and commenced the litigations, without malice or bad faith, with the belief and understanding that their said patents were valid and their publications and threats warranted by the scope of their patent claims, their trademark registrations for 'Day-Glo,' and the patent and trade-mark laws of the United States." (Finding 20, Appendix C, p. 13.)

The district court issued a broad injunction enjoining Switzers from all conduct which had or might constitute misuse of the '384 and '529 patents and the trademark (Appendix C, pp. 20-22).

Further, in a consent decree entered on October 22, 1953 by the United States District Court in San Francisco, which terminated a government antitrust suit against the Switzers, the two patents held to have been misused in the instant case were effectively sterilized by requiring that Switzers issue unrestricted royalty free licenses under such patents and by enjoining Switzers from instituting any infringement actions under said patents (Paragraph V, Appendix 270-271). Thus, the consent decree terminated the misuse of these two patents as of 1953, seven years before the decree was entered below. The consent decree did not purport to impair Switzers' property rights in the Day-Glo trademark. It did enjoin certain conduct in connection with the use and licensing of the trademark (Appendix 266-279, especially 274-277). Pursuant to the requirements of the decree Switzer gave wide publicity to its provisions (Appendix 285-86). Under paragraph XV of the consent decree the district court retained and still has jurisdiction over the government's suit permitting either party to apply for further orders or amendments as might be appropriate to carry out the final judgment (Appendix 278-279).

REASONS FOR DENYING THE WRIT.

1. The petition does not present an important question of federal law. The decision of the court of appeals affirming the district court merely upholds the well-established principle that the district court enjoys a broad discretion in fashioning remedies for antitrust violations (Opinion, Appendix A, xx-xxi). The district court after lengthy consideration framed a detailed injunction to prevent future violations of the antitrust laws. The court of appeals unanimously held that the decree was adequate for that purpose. The brief of petitioner (hereinafter called "Radiant") erroneously implies that no such injunction was issued by the district court.

2. The district court and the court of appeals properly refused to enjoin further use of the Day-Glo trademark. The court of appeals noted that it had found no Supreme Court decision authorizing the relief requested by Radiant (Appendix A, xx). The court might well have said it could find no authority in any court for such relief. Thus, in *Cott Beverage Corporation v. Canada Dry Ginger Ale*, 146 F. Supp. 300, 302-03 (S. D. N. Y. 1956), appeal dismissed, 243 F. 2d 795 (2d Cir. 1957), and *American TCP Corp. v. Shell Oil Co.*, 123 F. Supp. 155 (S. D. N. Y. 1954) cited by Radiant (petition, p. 6. n. 2), both courts refused to enjoin use of the trademark in issue. The other two cases cited by Radiant in note 2 both involve consent decrees and constitute no authority for Radiant's position. Radiant cites no contested case where an injunction against further use of a trademark was issued. In *Timken Co. v. United States*, 341 U. S. 593 (1951), where a trademark had been used in violation of the antitrust laws, injunction against further use of the misused mark was not even suggested as a remedy.

While Radiant relies on the divestiture cases (where the defendant is recompensed for the loss of its property), it actually seeks not divestiture but the harsh penalty of forfeiture. Without a cent of compensation to its owners the Day-Glo mark would be cast into the public domain for anyone but Switzers to use.* Even in instances where divestiture might be proper this Court has recognized that it is a harsh and unusual remedy and should be sparingly ordered. In the *Timken* case, *supra*, the Court, in reversing an order for divestiture of stock interests in subsidiary corporations, said:

> "Since divestiture is a remedy to restore competition and not to punish those who restrain trade, it is not to be used indiscriminately, without regard to the type of violation or whether other effective methods, less harsh, are available * * *. While the decree here does not call for confiscation, it does call for divestiture." 341 U. S. 593 (1951) p. 603.

The decisions of this Court which most nearly approximate the question raised here are not the divestiture cases but those decisions involving decrees ordering compulsory royalty free patent licenses. This Court has twice indicated that such a decree, which amounts to dedication of the patent to the public, should rarely, if ever, be issued. Thus in *Hartford-Empire Co. v. United States*, 323 U. S. 386, 414-17 (1945) this Court reversed such a decree as confiscatory and unwarranted. In *United States v. National Lead Co.*, 332 U. S. 319 (1947), this Court refused a request by the government to amend a district court decree

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* While it is true that a decree could prevent the use of the Day-Glo mark by Radiant as well as by Switzers, such decree could not prevent its use by third persons who are not parties to this action. Thus, the order sought by the petition would inevitably lead to hopeless public confusion over the source of goods bearing the Day-Glo mark.

to require compulsory royalty free patent licenses. Both these decisions have been approved by the Report of the Attorney General's Committee to Study the Antitrust Laws, pp. 255-58.

The restrictions imposed by the present injunction, coupled with those of the consent decree assuring a free market for daylight fluorescent materials, are sufficient answer to Radiant's contention (Petition, p. 7) that Switzers will continue to reap the harvest of its illegal conduct if it retains its rights to the Day-Glo mark.

With respect to Radiant's point 2 under the heading, Reasons for Granting the Writ (Petition pp. 7-8), it would *not* be merely a "slight step forward" to enjoin Switzers from using the trademark. The *Worden* and *Manhattan Medicine* cases, cited by Radiant on page 8 of its petition, are not applicable here. In this case there was no finding, nor indeed any evidence, of misrepresentation as to the nature or of the source of origin of the trademark goods. On the contrary the district court specifically found that Switzers had acted in good faith.

Under point 3 (Petition, p. 9) Radiant argues that the court of appeals unduly limited the rights of private litigants, citing Appendix A, xvix-xx. Radiant misconstrues the thrust of the court's opinion on this issue. The court stressed that the divestiture cases relied on by Radiant involved "conspiratorial combine[s] of giant economic units of industry," as contrasted with Switzers, "a single supplier of fluorescent materials and its officer-stockholders." Clearly the size of the violator and the magnitude of the violation are dominant factors in determining the scope of the relief. The court of appeals was correct when it stated that it "could not require divestiture in the absence of convincing reasons why that remedy is necessary to prevent continued violations of the antitrust laws."

The court found that the district court believed that continued violations could be prevented without forfeiture of the Day-Glo trademark and on this basis properly held that the decree based on such a conclusion was "a valid exercise of the large discretion with which the court was vested."

3. The issue raised by the petition is not an appropriate one for review in this Court. The transcript below ran almost three thousand pages; over four hundred exhibits, some composed of numerous documents, were put in evidence. Without a detailed review of the record it is inconceivable that this Court would hold as a matter of law that the district court abused its discretion by failing to give adequate injunctive relief. This case must be distinguished from the divestiture cases cited by Radiant on page 5, note 1, and on page 8 of its petition. In those cases an appeal was taken directly to this Court without intermediate review by the court of appeals, and necessarily this Court was obliged to examine the record in detail and closely scrutinize the relief granted. See *International Boxing Club v. United States*, 358 U. S. 242, 253 (1959). Here the decree of the district court was carefully considered by the court of appeals and found sufficient.

CONCLUSION.

For the reasons stated above Switzers pray that the petition be denied.

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APPENDIX C.

Findings of Fact and Conclusions of Law.

This matter having come on for trial, and the Court having heard the evidence and having examined and considered the documentary and other exhibits introduced into evidence at the said trial, and the Court having read and fully considered the briefs and arguments respectively submitted by the parties and being fully advised, the Court renders its Findings of Fact and Conclusions of Law as follows:

Findings of Facts.

1. Harry P. Locklin and Elmer J. Brant are co-partners doing business under the firm name and style of Radiant Color Company. They are referred to in these Findings sometimes as Radiant.

2. Switzer Brothers, Inc. is an Ohio corporation, wholly owned by Robert C. Switzer and Joseph L. Switzer. All three defendants are referred to in these Findings sometimes collectively as Switzers.

3. At all times from January 1, 1949 until the present, Radiant and the Switzers have been competitors in the business of manufacturing and selling daylight fluorescent materials. The products of Radiant are called "Velva-Glo" and those of Switzers are called "Day-Glo."

4. Daylight fluorescent materials are commonly understood by those in the trade to include liquid colors, coated paper and cardboard, and pigments which produce brilliant color effects by virtue of the phenomenon of fluorescence in response to the visible light of daylight.

5. The daylight fluorescent materials produced by Radiant and Switzers have been and are being sold in interstate commerce through channels of trade including

sign makers, printers and the like, who use such daylight fluorescent materials to produce completed advertising, signalling, amusement and other novelty devices ornamented or fabricated from such daylight fluorescent materials. Typical examples include billboards, posters, car cards, window banners, window displays, Christmas cards, cut out letters, magazine inserts, and the like. These are called "end-use" devices in these Findings.

6. On January 1, 1949, the date when Radiant began business as a partnership, Switzer Brothers, Inc. was the exclusive licensee of a number of patents and patent applications owned by Robert C. Switzer, Joseph L. Switzer, and their wives, and relating to fluorescent materials and fluorescent end-use devices. These are hereafter referred to as the Switzer patents and applications.

7. Switzer Brothers, Inc. entered into contracts with a number of manufacturers of daylight fluorescent materials licensing them to use the trade-mark "Day-Glo" and the Switzer patents and applications. The manufacturers in turn agreed

(a) that they would sell the daylight fluorescent materials only to licensed dealers and only to licensed end-users, and

(b) that they would produce only Day-Glo products under the license arrangement.

The licensees under such agreements included Sherwin-Williams Company, Lawter Chemicals, Inc., Dennison Manufacturing Company, Mid-States Gummed Paper Company, International Printing Ink Company, and National Card, Mat and Board Company.

8. Under the foregoing arrangement, Switzer Brothers, Inc. and the licensed manufacturers of daylight fluorescent materials entered into contracts with dealers in

daylight fluorescent materials under which they licensed the dealers to sell "Day-Glo" products. Under these agreements, the dealers agreed

(a) that they would deal only in those daylight fluorescent products which carry the trade-mark "Day-Glo" and have been obtained from Switzer Brothers, Inc. or other sources authorized in writing by Switzer Brothers, Inc. to produce Day-Glo materials;

(b) that they would supply Day-Glo materials only to Day-Glo licensees; and

(c) that they would not compete with Day-Glo licensees, with Switzer Brothers, Inc., or with other authorized sources of Day-Glo materials.

9. Under the foregoing arrangements, Switzer Brothers, Inc., as principal, and the licensed manufacturers of, and dealers in, daylight fluorescent materials, as agents, entered into written agreements with manufacturers of end-use devices licensing them under the trade-mark "Day-Glo" and under the Switzer patents and applications. The manufacturers of the end-use devices in turn agreed

(a) that they would use the trade-mark "Day-Glo" on all daylight fluorescent devices manufactured by them, and

(b) that they would obtain their daylight fluorescent materials only from sources "approved in writing" by Switzer Brothers, Inc. to furnish or supply such materials.

10. In addition to the formal end-use licensees referred to in Finding 9, Switzer Brothers, Inc. and its manufacturing licensees named in Finding 7 have sold certain of the daylight fluorescent materials manufactured by them under a label license giving the purchasers of such materials a free royalty-paid license to use such materials only in the manufacture of a device covered by pertinent

Switzer patents and applications. At the beginning, such licenses were issued for non-production uses only. On October 27, 1952, this form of label licensing was extended to fluorescent coated paper, and on October 15, 1953, it was extended to all daylight fluorescent materials.

11. Except as provided in Finding 10, no licenses were granted to any manufacturer of end-use devices other than those patent licenses which are automatically included in the formal end-use licenses referred to in Finding 9.

12. All of such licenses referred to in Findings 7, 9 and 10 included a license under Robert C. Switzer named patent 2,417,384 issued March 11, 1947, for *Daylight Fluorescent Signaling and Display Device*. The Switzers have characterized this patent as the basic patent in daylight fluorescent devices. By its terms it purports to cover "A device for conveying intelligence visually in daylight beyond the range of subtractive color perceptibility" describing its specific ingredients or elements, but it does not purport to cover the daylight fluorescent materials used in making such a device.

13. All of such licenses referred to in Findings 7, 9 and 10 made after July 5, 1949, included a license under Joseph L. Switzer and Robert C. Switzer patent 2,475,529 issued July 5, 1949 for *Fluorescent Device and Method of Making the Same*. The Switzers have characterized this patent as including all daylight fluorescent devices made with poster papers, cotton fabrics, fluorescent coated papers and like supports. By its terms it covers "a fluorescent device for use at a distance from a source of fluoresciginous radiations" describing its specific ingredients and elements, as well as the method of making such a device. None of the claims purports to cover fluorescent materials used in making such a device.

14. The fluorescent materials manufactured by Switzer Brothers, Inc. and its manufacturing licenses named in Finding 7 have substantial non-infringing uses not defined in any of the claims of patents 2,417,384 and 2,475,529.

15. In furtherance of the licensing program, the Switzers, starting early in 1949, charged non-licensees under the "Day-Glo" program and all users of non-licensed displays with infringement of Letters Patent 2,417,384 and 2,475,529 by advertisements and news releases in the trade papers, by letters and by oral communications.

16. In furtherance of the Day-Glo licensing program, Switzers, starting in mid-1949, threatened all non-licensees under the "Day-Glo" program and all users of non-licensed displays with patent infringement suits under Letters Patent 2,417,384 and 2,475,529 by advertisements in the trade papers, by letters and by oral communications.

17. In furtherance of the Day-Glo license program, Switzers commenced patent litigation suits in scattered sections of the country against unlicensed dealers in daylight fluorescent materials, unlicensed manufacturers of end-use devices and users of unlicensed end-use devices.

18. In furtherance of the Day-Glo licensing program, Switzers instituted actions for alleged patent infringements against customers of Radiant Color Company, one such action being the instant action in which complaint was filed on June 5, 1952, and another action being an action filed in the United States District Court for the Northern District of Ohio, Eastern Division, on September 19, 1953, as Civil Action No. 29,975, in which the parties plaintiff were Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, and the defendant was James P.

Byrne, doing business as Byrne Wallpaper and Paint Stores. Switzer Brothers, Inc., among other things, intended thereby to deter customers and prospective customers of Radiant Color Company from purchasing fluorescent materials produced by Radiant Color Company.

19. The publications and threats were, at least in part, unwarranted in fact because the Switzer patents did not purport to cover the broad field of daylight fluorescent displays for which claim was made in the publications.

20. Switzers made the publications and threats, and commenced the litigations, without malice or bad faith, with the belief and understanding that their said patents were valid and their publications and threats warranted by the scope of their patent claims, their trademark registrations for "Day-Glo," and the patent and trade-mark laws of the United States.

21. Notwithstanding the matters in Finding 20,

(a) the publications were excessive;

(b) Switzers should have known that the publications were excessive; and

(c) the publications were not followed promptly by litigation against all those to whom they were directed.

22. The parties have submitted substantial probative evidence concerning the prior state of the art with which we are here concerned. Although such evidence appears sufficient to permit findings concerning anticipation of the instant patent claims by the prior art, the parties have agreed in open court that the issues of patent validity and infringement are not before this Court. Such agreement may well have been motivated by *Switzer Brothers, Inc. v. Chicago Cardboard Co.*, 252 F. 2d 407 (C. A. 7, 1958), which held that the infringement issue was not properly

before the Court in this case, and *Texas-Miller Hat Corp. v. Switzer Bros.*, 201 F. 2d 824 (C. A. 5, 1953), certiorari denied 346 U. S. 821, which held that two patents, including the Switzer "basic patent" number 2,417,384, were invalid. Although the briefs include arguments directed to the issues of patent validity and infringement, the Court adheres to the said stipulation and, therefore, makes no findings concerning patent validity or infringement.

23. The Switzer agreements referred to in Findings 7, 8, 9 and 10 have had, and are still having, the effect of substantially lessening competition and have tended, and are still tending, to create a monopoly in daylight fluorescent materials.

24. The Switzer program resulted in a combination which included Switzer Brothers, Inc., as well as at least eight other manufacturers of daylight fluorescent materials; dealers in daylight fluorescent materials in all parts of the United States; and more than 4,000 licensed manufacturers of "Day-Glo" end-use devices; all of whom were forbidden to deal in unauthorized daylight fluorescent materials.

25. While this program was in effect, Switzer Brothers, Inc., alone, built up a market of over $500,000 per annum in the sale of daylight fluorescent materials.

26. Radiant Color Company was within the target area of the Switzer licensing, publicity and litigation program. Licensees were advised that Velva-Glo materials were unapproved; licensees and others were advised that Velva-Glo materials were infringements; customers of Radiant were threatened with suit; and finally customers of Radiant were actually sued by the Switzers.

27. Robert C. Switzer and Joseph L. Switzer each participated in the acts of which Radiant has complained in that:

(a) Robert C. Switzer and Joseph L. Switzer, at least as late as December 16, 1955, were the owners of an undivided ¾th interest, as tenants in common, of patents 2,417,384 and 2,475,529 and of the applications upon which said patents were issued and their wives, Patricia Switzer and Elise deGroot Switzer, were the owners of the remaining undivided ¼th interest of said patents;

(b) Robert C. Switzer and Joseph L. Switzer, together with their wives, Patricia Switzer and Elise deGroot Switzer, licensed Switzer Brothers, Inc., under patents 2,417,384 and 2,475,529 and authorized Switzer Brothers, Inc. and third persons to execute the licenses referred to in Findings 7, 8, 9 and 10.

(c) Robert C. Switzer and Joseph L. Switzer were the sole stockholders of Switzer Brothers, Inc. and were officers and directors of Switzer Brothers, Inc. at all times since prior to January 1, 1949;

(d) Robert C. Switzer and Joseph L. Switzer authorized, directed and/or did some of the acts contributing in whole or in part to the matters found above;

(e) Robert C. Switzer and Joseph L. Switzer authorized Switzer Brothers, Inc., to commence the patent infringement actions referred to above and agreed, together with their wives, to pay Switzer Brothers, Inc. the reasonable expenses incurred by it in prosecuting said litigation;

(f) Robert C. Switzer and Joseph L. Switzer availed themselves of the fruits of the aforesaid conduct of Switzer Brothers, Inc. in that Robert C. Switzer and Joseph L. Switzer received royalty payments from Switzer Brothers, Inc. both under its license and under sublicenses granted by Switzer Brothers, Inc. as found in Findings 7 and 9 above, and in that they both received dividends from Switzer Brothers, Inc, accruing in part from profits made by Switzer Brothers, Inc. and arising from the acts as found herein.

28. The foregoing conduct of Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer has damaged the public in general:

(a) by depriving individual members of the public of their right to purchase unpatented fluorescent materials in a free, competitive, unrestricted market; and

(b) by coercing individual members of the public to purchase "Day-Glo" fluorescent materials instead of the fluorescent materials produced by others.

29. Radiant Color Company has been directly damaged by the Switzer license program in the respects noted in Findings 30 to 34 below, and possibly in others.

30. Commencing in 1950 and continuing until late in 1953, Radiant was put to expense in counteracting the Switzer propaganda and in reassuring dealers and customers that the Switzer program could not prevent the use of Radiant's products.

31. Commencing on June 5, 1952 and continuing until February 11, 1958, Radiant was put to the expense of defending its customer, Chicago Cardboard Company, by virtue of the complaint filed in this action.

32. Commencing on February 9, 1953 and continuing until April 8, 1957, Radiant was put to the expense of defending its customer, James P. Byrne, in the Northern District of Ohio, Eastern Division.

33. Commencing shortly after June 5, 1952, Radiant's market in Velva-Glo paper became depressed due, at least in part, to the commencement of the instant action, and Radiant has lost profits which it would otherwise have made.

34. Commencing shortly after February 9, 1953, Radiant's market in Velva-Glo silk screen colors became

depressed due, at least in part, to the commencement of the Cleveland suit, and Radiant has lost profits which it would otherwise have made.

35. The record does not disclose the dollar value of the damages enumerated in Findings 28 to 32 above, thereby making an accounting the only appropriate procedure for ascertaining the dollar extent of such damages.

36. Switzers have introduced no evidence in support of paragraphs 19, 20, 21 and 22 of their counteraction against Radiant.

37. Unless injunctive relief is granted in this action, Radiant Color Company will sustain further and additional damages by virtue of the aforesaid continuing violation of the antitrust laws.

Conclusions of Law.

1. The Court has jurisdiction over the parties to this litigation and over the subject matter thereof.

2. Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, have misused Switzer patents 2,417,384 and 2,475,529, as well as the Day-Glo trademarks, in restraint of trade between the states and in a way tending to create a monopoly in unpatented daylight fluorescent materials in part

(a) by granting the exclusive right to use the combination claimed by said patents to users of said combination who obtained the daylight fluorescent materials therefor from Switzer Brothers, Inc., or from sources designated by Switzer Brothers, Inc., and in part

(b) by granting a preferential right to use the combination claimed by said patents to users of said combination who obtained the daylight fluorescent

materials therefor from Switzer Brothers, Inc., or from sources designated by Switzer Brothers, Inc.,

and have thereby violated the antitrust laws of the United States, particularly United States Code, Title 15, Sections 1, 2 and 14.

3. Radiant Color Company is entitled to a writ of injunction to be issued out of and under the seal of this Court perpetually restraining and enjoining said Switzer Brothers, Inc., Robert C. Switzer, Joseph L. Switzer, the officers of Switzer Brothers, Inc., their agents, employees, attorneys, and all persons acting on behalf of any of them

(a) from granting any license to use the combination claimed by said Switzer patents 2,417,384 and 2,475,529, where such licensed use is directly or indirectly conditioned on purchasing or otherwise obtaining only from Switzer Brothers, Inc., or from sources designated by it, any daylight fluorescent materials to be used in such combination, but not patented by such patents;

(b) from selling or offering to sell any daylight fluorescent materials, with an undertaking or understanding that the purchaser will be granted the right to use the combination claimed in said Switzer patents on conditions that such daylight fluorescent materials, unpatented with respect to said patents, shall be purchased only from Switzer Brothers, Inc., or from a source designated by it;

(c) from in any way discriminating, in the granting of licenses to use the combination claimed in said Switzer patents, in favor of users or proposed users of such combination who purchase daylight fluorescent materials therefor from Switzer Brothers, Inc., or from a source designated by it, and against such users or proposed users who purchase such daylight fluorescent materials from any other source;

(d) from so using said Switzer patents as to tend to create a monopoly in daylight fluorescent materials not patented by such patents, or in any way, directly or indirectly, misusing such patents in violation of the antitrust laws of the United States, particularly United States Code, Title 15, Sections 1, 2 and 14.

(e) from bringing suit against or in any way threatening the customers of Radiant Color Company with suits for alleged infringement of said Switzer patents on account of the sale and use of daylight fluorescent materials which have been obtained from Radiant Color Company and are not embraced by the claims of said patents.

(f) from making representations that the Switzer patents cover fluorescent materials produced by Radiant Color Company, or devices made from such materials, which are not embraced by the claims of said patents.

4. Radiant Color Company is entitled to have this cause referred to a special master to ascertain, take, state, and report on account of the damages suffered, and costs expended by Radiant Color Company and the amount of reasonable attorneys' fees.

5. Radiant Color Company is entitled to a judgment dismissing the Counter-claim against Intervenors filed by Switzer Brothers, Inc., Robert C. Switzer, and Joseph L. Switzer.

6. The amount allowable to Radiant Color Company by reason of its damages sustained and costs expended, and the matter of costs on accounting, shall await the further order of this Court.

J. H. MINER.

Judgment.

This matter having come on for trial, and the Court having heard the evidence and having examined and considered the documentary and other exhibits introduced into evidence at the said trial, and the Court having read and fully considered the briefs and arguments respectively submitted by the parties and being fully advised, and the Court having entered its Findings of Fact and Conclusions of Law;

IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. The Court has jurisdiction over the parties to this litigation and over the subject matter thereof.

2. Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, have misused Switzer patents 2,417,384 and 2,475,529, as well as the Day-Glo trademarks, in restraint of trade between the states and in a way tending to create a monopoly in unpatented daylight fluorescent materials in part

(a) by granting the exclusive right to use the combination claimed by said patents to users of said combination who obtained the daylight fluorescent materials therefor from Switzer Brothers, Inc., or from sources designated by Switzer Brothers, Inc., and in part

(b) by granting a preferential right to use the combination claimed by said patents to users of said combination who obtained the daylight fluorescent materials therefor from Switzer Brothers, Inc., or from sources designated by Switzer Brothers, Inc.,

and have thereby violated the antitrust laws of the United States, particularly United States Code, Title 15, Sections 1, 2 and 14.

3. A writ of injunction shall issue out of and under the Seal of this Court perpetually restraining and enjoin-

ing said Switzer Brothers, Inc., Robert C. Switzer, Joseph L. Switzer, the officers of Switzer Brothers, Inc., their agents, employees, attorneys, and all persons acting on behalf of any of them,

(a) from granting any license to use the combination claimed by said Switzer patents 2,417,384 and 2,475,529, where such licensed use is directly or indirectly conditioned on purchasing or otherwise obtaining only from Switzer Brothers, Inc., or from sources designated by it, any daylight fluorescent materials to be used in such combination, but not patented by such patents;

(b) from selling or offering to sell any daylight fluorescent materials, with an undertaking or understanding that the purchaser will be granted the right to use the combination claimed in said Switzer patents on condition that such daylight fluorescent materials, unpatented with respect to said patents, shall be purchased only from Switzer Brothers, Inc., or from a source designated by it;

(c) from in any way discriminating in the granting of licenses to use the combination claimed in said Switzer patents, in favor of users or proposed users of such combination who purchase daylight fluorescent materials therefor from Switzer Brothers, Inc., or from a source designated by it, and against such users or proposed users who purchase such daylight fluorescent materials from any other source;

(d) from so using said Switzer patents as to tend to create a monopoly in daylight fluorescent materials not patented by such patents, or in any way, directly or indirectly, misusing such patents in violation of the antitrust laws of the United States, particularly United States Code, Title 15, Sections 1, 2 and 14;

(e) from bringing suit against or in any way threatening the customers of Radiant Color Company with suits for alleged infringement of said Switzer

patents on account of the sale and use of daylight fluorescent materials which have been obtained from Radiant Color Company and are not embraced by the claims of said patents;

(f) from making representations that the Switzer patents cover fluorescent materials produced by Radiant Color Company, or devices made from such materials, which are not embraced by the claims of said patents.

4. This cause shall be referred to a special master to ascertain, take, state, and report an account of the damges suffered, and costs expended, by Radiant Color Company and the amount of reasonable attorneys' fees; and

(a) Radiant Color Company on such accounting shall have the right to cause the examination of the officers, servants, and employees of Switzer Brothers, Inc., Robert C. Switzer, and Joseph L. Switzer, orally or otherwise, and to examine other witnesses, and to cause the production and examination of the pertinent books, vouchers, records and documents of said Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, and to have all necessary process of the Court to compel such attendance and production before the said master, at such times and places as he shall direct; and

(b) Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, on such accounting shall have the right to cause the examination of the officers, servants, and employees of Radiant Color Company, orally or otherwise, and to examine other witnesses, and to cause the production and examination of the pertinent books, vouchers, records and documents of said Radiant Color Company, and to have all necessary process of the Court to compel such attendance and production before the said master, at such times and places as he shall direct.

5. The Counter-claim against Intervenors filed by Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer, is hereby dismissed.

6. The amount allowable to Radiant Color Company by reason of its damages sustained and costs expended, and the matter of costs on accounting shall await the further order of this Court.

7. The parties shall appear before this Court on September 19, 1960, at which time the Court will hear any motions the parties may desire to submit, and the matter of the person of the special master shall be determined.

J. H. MINER.